Before the Federal Communications Commission Washington, D.C. 20554

ORDER

In the Matter of)
July 3, 2012 Annual Access Charge Tariff Filings))) WCB/Pricing No. 12-09)

Released: July 2, 2012

By the Acting Chief, Wireline Competition Bureau:

I. INTRODUCTION

Adopted: July 2, 2012

1. The Commission's rules require price cap local exchange carriers (LECs) and rate-of return carriers subject to section 61.38 of the Commission's rules to file revisions to their interstate tariffs this year to become effective July 3, 2012. Last year, on November 18, 2011, the Commission released the *USF/ICC Transformation Order*, which established a number of new rules requiring incumbent LECs to adjust, over a period of years, many of their interstate and intrastate switched access charges effective on July 1 of each of those years, with the ultimate goal of transitioning to a bill-and-keep regime at the end of the transition. The Commission also adopted a transitional recovery mechanism, including a newly tariffed Access Recovery Charge (ARC), which is intended to partially mitigate the effect of reduced intercarrier revenues on carriers. Carriers reflected these new rules in their annual access charge tariff filings for 2012. In addition, pursuant to the *USF/ICC Transformation*

¹ See 47 C.F.R. §§ 69.3(h) and 69.3(f)(1). This year, we granted a waiver to extend the effective date of the changes to July 3, 2012. July 3, 2012 Annual Access Charge Tariff Filings, WCB/Pricing File No. 12-07, Order, DA 12-482, at para. 3 (Wireline Comp. Bur., rel. Mar. 28, 2012) (Waiver Order).

² See Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), pets. for review pending, Direct Commc'ns Cedar Valley, LLC v FCC, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

³ See USF/ICC Transformation Order, 26 FCC Rcd at 17934-35, para. 801 (Although many of the switched access rate elements are subject to the transition adopted, other rates are not being specifically reduced at this time.). See also id. at 18109-115, paras. 1297-1314 (seeking comment on the appropriate transition for rate elements not specifically addressed in the Order). This year, we granted a waiver to extend the effective date of the changes to July 3, 2012. See Waiver Order.

⁴ See USF/ICC Transformation Order, 26 FCC Rcd at 17988-94, paras. 906-16.

⁵ See Material to be Filed in Support of 2012 Annual Access Tariff Filings, WCB/Pricing File No. 12-08, Order, DA 12-575 (Wireline Comp. Bur., rel. Apr. 19, 2012) (TRP Order).

Order, certain rate-of-return carriers subject to section 61.39 of the Commission's rules also filed annual access charge tariff filings that included an ARC rate.⁶

- 2. Carriers submitted their annual access tariff filings on either June 18, 2012, or June 26, 2012.⁷ These tariffs were filed pursuant to sections 61.41 through 61.49 of the Commission's rules for the price cap LECs, section 61.38 for rate-of-return LECs regulated pursuant to that section of the Commission's rules, and the new requirements established in sections 51.700 through 51.715 and 51.901 through 51.919 implementing the reforms adopted in the *USF/ICC Transformation Order*.⁸ Appendix A identifies the LECs that filed original tariff transmittals on June 18, 2012, or June 26, 2012, and the subsequent revisions.
- 3. No parties filed petitions to suspend and investigate the filed tariffs. However, we have a number of questions regarding how carriers calculated their "Eligible Recovery," which is critical to the calculation of the ARC and the potential recovery from the Connect America Fund (CAF). Therefore, on our own motion, we suspend for one day and set for investigation the ARC rates contained in the 2012 annual access tariffs of all issuing carriers that are charging an ARC in this annual access tariff filing. The transmittals associated with the issuing carriers that are being suspended are listed in Appendix B.

II. DISCUSSION

4. The *USF/ICC Transformation Order* created a complex set of rules to implement reforms to both the interstate and intrastate switched access rate elements of all incumbent LECs.¹¹ This implementation process requires a complicated interaction between the Commission and the state commissions to ensure that the transition plan is properly implemented.¹² Moreover, the rules adopted in the *USF/ICC Transformation Order* required the Commission and the industry to create a number of new spreadsheets for the tariff review plans (TRPs) submitted as supporting documentation to demonstrate that each carrier is properly implementing the reforms.¹³ Because of the complicated nature of the new

⁶ Rate-of-return carriers regulated pursuant to section 61.39 usually file their annual access tariff filings in odd numbered years. 47 C.F.R. § 69.3(f)(2).

⁷ Corrections were filed on various dates as reflected in Appendix A.

 $^{^8}$ 47 C.F.R. §§ 61.41-.49, 51.700-.715 and 51.901-.919.

⁹ Although the Public Service Commission of the District of Columbia (DCPSC) filed "comments" on Verizon's tariffs, arguing that imposing an ARC on District of Columbia customers is inherently unfair, we conclude that these "comments" are not a petition to suspend Verizon's tariff because the DSPSC concedes that section 51.915(e)(3) of the Commission's rules allows Verizon to calculate the ARC on a holding company basis. *See* Verizon Telephone Companies Tariff Nos. 1, 11, 14, 16, Transmittal No. 1181, Comments of the Public Service Commission of the District of Columbia, WCB/Pricing File No. 12-07 (filed June 25, 2012) (DCPSC Comments). These comments are more properly characterized as a request for reconsideration of section 51.915(e)(3) of the Commission's rules, which the DCPSC has already requested. *See* Petition for Reconsideration of the Public Service Commission of the District of Columbia, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208 at 3-5 (filed Dec. 29, 2011).

¹⁰ USF/ICC Transformation Order, 26 FCC Rcd at 17957, para. 851.

¹¹ See generally USF/ICC Transformation Order, 26 FCC Rcd at 17663.

¹² *Id.* at 17934-36, para. 801.

¹³ See TRP Order at 5-7.

rules and the TRPs developed to ensure compliance with the rules, we conclude that the vast majority of these tariff filings require further examination. Based on the review we have been able to conduct thus far, there are substantial questions as to whether the vast majority of the tariffs are lawful, and those questions require further investigation.

- 5. *NECA Tariff*. On May 30, 2012, the Chief of the Wireline Competition Bureau sent a letter to Regina McNeil, Vice President and General Counsel of the National Exchange Carrier Association (NECA). The letter explained that the methodologies that NECA had developed to complete the calculations required by the *USF/ICC Transformation Order* did not comply with the Commission's rules. On June 1, 2012, NECA filed a petition seeking a temporary expedited waiver of the Commission's rules and related orders governing the calculation of ARC rates and reporting of initial estimated Eligible Recovery amounts. Specifically, NECA requested a waiver of section 51.909(b)(2)(ii) of the Commission's rules for purposes of calculating ARCs under section 51.917(e) of the Commission's rules Service Administrative Company. The Commission did not act on the pending NECA waiver request and NECA has not altered its proposed methodologies. NECA, therefore, filed a TRP that requires further investigation. Accordingly, we conclude that, substantial questions of lawfulness exist that warrant further investigation of the NECA ARC rates.
- 6. Eligible Recovery Issues. In the USF/ICC Transformation Order, the Commission required incumbent LECs that choose to participate in the recovery mechanism to determine their Eligible Recovery in the 2012 Annual Access Charge Tariff Filing. This calculation of Eligible Recovery is critical because it establishes, among other things, the baseline from which carriers will be calculating their ARC charges and potential recovery from the CAF. We note that the ARC charge is a new charge that will be applied to consumers. Accordingly, it is essential for the Commission to ensure that carriers correctly calculated their Eligible Recovery in their TRPs filed with the 2012 Annual Access Tariff Filing, not just for this year, but for implementation of the USF/ICC Transformation Order throughout the transitional period.
- 7. Upon review of carriers' tariffs and TRPs, questions have arisen as to whether carriers correctly calculated their Eligible Recovery, given the complicated nature of the TRP spreadsheets. We note that carriers used differing methodologies in calculating their Eligible Recovery. In addition, questions have arisen as to whether carriers properly complied with sections 51.915(c) and 51.917(b)(7) of our rules, which require both price cap carriers and rate-of-return carriers to calculate the baseline for determining their Eligible Recovery at least in part on revenues received (or collected) by March 31,

¹⁶ See Petition for Expedited Waiver filed by National Exchange Carrier Association, Inc., WC Docket Nos. 05-337, 10-90; WCB/Pricing File No. 12-08, at 1 (filed June 1, 2012) (NECA Petition).

¹⁴ Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau to Regina McNeil, Vice President and General Counsel, NECA, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208 (May 30, 2012).

¹⁵ Id

¹⁷ 47 C.F.R. § 51.909(b)(2)(ii).

¹⁸ 47 C.F.R. § 51.917(e).

¹⁹ USF/Transformation Order, 26 FCC Rcd at 17957, para. 851.

²⁰ See 47 C.F.R. §§ 51.907, 51.909, 51.915, 51.917.

- 2012.²¹ On our own motion, we conclude that all carriers that included ARCs in their respective tariffs require further inquiry as to whether they reflect properly calculated Eligible Recovery.
- 8. Accordingly, on our own motion, we conclude that substantial questions of lawfulness exist that warrant further investigation of the majority of the 2012 annual access tariffs. We, therefore, suspend the ARC rates contained in the 2012 annual access tariffs of all issuing carriers that are charging an ARC pursuant to this annual access tariff filing. We also impose an accounting order requiring the affected carriers to keep accurate account of all amounts received that are associated with the rates subject to this investigation. The specific issues that will be the subject of the investigation will be identified in an upcoming designation order and may include, but not be limited to, the issues identified in the paragraphs above. We may also, by order, identify additional issues that may require investigation or discrete issues that do not warrant further investigation.

III. EX PARTE REQUIREMENTS

9. This investigation is a permit-but-disclose proceeding and subject to the requirements of section 1.1206(b) of the rules.²² Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one-sentence or two-sentence description of the views and arguments presented is generally required.²³

IV. ORDERING CLAUSES

- 10. ACCORDINGLY, IT IS ORDERED that, pursuant to section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), and through the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, the ARC rates contained in the 2012 annual access tariffs of all issuing carriers that are charging an ARC are SUSPENDED for one day and an investigation IS INSTITUTED.
- 11. IT IS FURTHER ORDERED that all issuing carriers charging an ARC rate MUST FILE a supplement advancing the currently scheduled effective date to July 2, 2012, and then SUSPEND its tariff revision for one day, until July 3, 2012. For this purpose, we waive sections 61.58, 61.59, and 61.86 of the Commission's rules, 47 C.F.R. §§ 61.58, 61.59, 61.86.
- 12. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 204(a), and pursuant to the authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, all issuing carriers charging an ARC SHALL KEEP ACCURATE ACCOUNT of all amounts received that are associated with the rates that are subject to this investigation.

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²¹ See 47 C.F.R. §§ 51.915(c), 51.917(b)(7). Section 51.915(c) provides that for price cap carriers, all of the components that comprise the 2011 price cap carrier base period revenue are based on revenues received (or collected) by March 31, 2012. For rate-of-return carriers, section 51.917(b)(7) requires the portion of the 2011 rate of return base period revenue that is comprised of transitional intrastate access service revenues and reciprocal compensation revenues to be based on revenues received (or collected) by March 31, 2012.

²² 47 C.F.R. § 1.1206(b).

²³ *Id*.

13. IT IS FURTHER ORDERED that any carrier required to suspend its tariff revisions pursuant to this order SHALL FILE a supplement within five business days from the release date of this order reflecting the suspension. Carriers should cite the "DA" number on the instant order as the authority for the filings.

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FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach Acting Chief, Wireline Competition Bureau

APPENDIX A 2012 Access Filings Made by ILECS

Issued: June 18, 2012 Price Cap ILECs

CenturyLink Operating Companies Transmittal No. 2	9
BellSouth Telecommunications Transmittal No. 23 CenturyLink Operating Companies Transmittal No. 23	57
	33
Cincinnati Bell Telephone Transmittal No. 87	21
	70
Consolidated Communications Companies Transmittal No. 3	38
FairPoint Communications Transmittal No. 3	31
Frontier Communications Transmittal No 2	26
Hawaii Telecom Inc. Transmittal No. 8	30
Illinois Consolidated Transmittal No. 15	55
Micronesian Telecommunications Corp. Transmittal No.	13
Nevada Bell Telephone Company Transmittal No. 23	32
Pacific Bell TelephoneCompany Transmittal No. 46	66
Puerto Rico Telephone Company Transmittal No. 8	37
Qwest Corporation Transmittal No. 46	55
Southern New England Telephone Co. Transmittal No. 103	33
Southwestern Bell Telephone Company Transmittal No. 334	15
Verizon Telephone Companies Transmittal No. 119)1
Virgin Islands Telephone Company Transmittal No.	59
Windstream Communications Transmittal No. 5	55

<u>Issued: June 18, 2012</u> Non-Price Cap ILECs

Alexicon Telecomunications Consulting	Transmittal No.	6
Chillicothe	Transmittal No.	102
City of Brookings	Transmittal No.	20
East Ascension Telephone Company	Transmittal No.	20
Etex Telephone Cooperative	Transmittal No.	16
Geneseo Telephone Company	Transmittal No.	17
GVNW Inc./ Management	Transmittal No.	215
Harrisonville Telephone Company	Transmittal No.	43
ICORE	Transmittal No.	108
John Staurulakis, Inc. (JSI)	Transmittal No.	165
Livingston Telephone Company	Transmittal No.	3
National Exchange Carrier Association	Transmittal No.	1347
Ozark Telephone Company	Transmittal No.	4
Pioneer Telephone Association	Transmittal No.	4
Seneca Telephone Company	Transmittal No.	3
Smithville Communications, Inc.	Transmittal No.	3

2012 Access Filings Made by ILECs (cont'd)

<u>Issued: June 18, 2012</u> Non-Price Cap ILECs		
SureWest Union Telephone Company (WY/UT)	Transmittal No. Transmittal No.	32 81
<u>Issued:</u> <u>June 19, 2012</u>		
John Staurulakis, Inc. (JSI)	Transmittal No.	166
<u>Issued:</u> <u>June 20, 2012</u>		
Chillicothe	Transmittal No.	103
<u>Issued:</u> <u>June 22, 2012</u>		
Consolidated Communications Companies Illinois Consolidated	Transmittal No. Transmittal No.	39 156
<u>Issued:</u> <u>June 26, 2012</u>		
Iowa Network Services, Inc. Minnesota Independent Equal Access Corp. South Dakota Network, LLC	Transmittal No. Transmittal No. Transmittal No.	29 26 8
<u>Issued:</u> <u>June 28, 2012</u>		
GVNW Inc./ Management	Transmittal No.	216
<u>Issued:</u> <u>June 29, 2012</u>		
Ameritech Operating Companies BellSouth Telecommunications CenturyLink Operating Companies National Exchange Carrier Association Southern New England Telephone Co. Southwestern Bell Telephone Company SureWest	Transmittal No.	1768 34 23 1348 1034 3346 34

APPENDIX BFiling Entities and Associated Transmittals Affected by Suspension

Issued: June 18, 2012 Price Cap ILECs

ACS	Transmittal No.	19
Ameritech Operating Companies	Transmittal No.	1767
BellSouth Telecommunications	Transmittal No.	33
CenturyLink Operating Companies	Transmittal No.	21
Cincinnati Bell Telephone	Transmittal No.	870
Consolidated Communications Companies	Transmittal No.	38
FairPoint Communications	Transmittal No.	31
Frontier Communications	Transmittal No	26
Hawaii Telecom Inc.	Transmittal No.	80
Illinois Consolidated	Transmittal No.	155
Nevada Bell Telephone Company	Transmittal No.	232
Pacific Bell TelephoneCompany	Transmittal No.	466
Puerto Rico Telephone Company	Transmittal No.	87
Qwest Corporation	Transmittal No.	465
Southern New England Telephone Co.	Transmittal No.	1033
Southwestern Bell Telephone Company	Transmittal No.	3345
Verizon Telephone Companies	Transmittal No.	1191
Virgin Islands Telephone Company	Transmittal No.	69
Windstream Communications	Transmittal No.	55

<u>Issued: June 18, 2012</u> Non-Price Cap ILECs

Alexicon Telecomunications Consulting	Transmittal No.	6
Chillicothe	Transmittal No.	102
City of Brookings	Transmittal No.	20
East Ascension Telephone Company	Transmittal No.	20
Etex Telephone Cooperative	Transmittal No.	16
Geneseo Telephone Company	Transmittal No.	17
GVNW Inc./ Management	Transmittal No.	215
Harrisonville Telephone Company	Transmittal No.	43
ICORE	Transmittal No.	108
John Staurulakis, Inc. (JSI)	Transmittal No.	165
Livingston Telephone Company	Transmittal No.	3
National Exchange Carrier Association	Transmittal No.	1347
Ozark Telephone Company	Transmittal No.	4
Pioneer Telephone Association	Transmittal No.	4
Seneca Telephone Company	Transmittal No.	3
Smithville Communications, Inc.	Transmittal No.	3

Filing Entities and Associated Transmittal Affected by Suspension (Cont'd)

<u>Issued:</u> <u>June 18, 2012</u> Non-Price Cap ILECs		
SureWest Union Telephone Company (WY/UT)	Transmittal No. Transmittal No.	32 81
<u>Issued:</u> <u>June 19, 2012</u>		
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Consolidated Communications Companies Illinois Consolidated	Transmittal No. Transmittal No.	39 156
<u>Issued:</u> <u>June 28, 2012</u>		
GVNW Inc./ Management	Transmittal No.	216
<u>Issued:</u> <u>June 29, 2012</u>		
CenturyLink Operating Companies National Exchange Carrier Association SureWest	Transmittal No. Transmittal No. Transmittal No.	23 1348 34